

I hereby certify that this correspondence is being filed via  
EFS-Web with the United States Patent and Trademark Office  
on June 3, 2009

PATENT  
Docket No.: 020048-003160US

TOWNSEND and TOWNSEND and CREW LLP

By: /Terrie J. Rau/

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

KURT E. PETERSEN et al.

Application No.: 09/970,434

Filed: October 2, 2001

For: DEVICE FOR ANALYZING A  
FLUID SAMPLE

Customer No.: 20350

Confirmation No.: 5347

Examiner: Nelson C. Yang

Art Unit: 1641

COMMUNICATION RESPONSE TO  
NON-COMPLIANT APPEAL BRIEF

Mail stop APPEAL BRIEF-PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Commissioner:

This communication is in reply to the Notice of Non-Compliant Appeal Brief mailed March 5, 2009. Please enter the following remarks. A Petition for a two-month extension of time from April 5, 2009, through June 5, 2009, accompanies this response.

## REMARKS

### **Status of the Claims**

With regard to Section III of the Appeal Brief, the status of the claims is as follows: Claims 1-20, 36, 38-39 and 41-75 are canceled. Claims 21-35, 37, and 40 stand rejected.

### **Status of Amendment filed subsequent to final rejection (37 CFR 41.37(c)(1)(iv))**

With regard to Section IV of the Appeal Brief, the status of the amendment filed subsequent to a final office action is as follows: A final office action was issued on February 7, 2005. Applicant filed a response on August 10, 2005. No claim amendments were made in the response. The arguments were entered and considered by the Examiner, as addressed in the Advisory action dated September 8, 2005. The status of the amendment filed subsequent to the Final Office Action has also been confirmed by the Examiner in the miscellaneous communication from Examiner Yang mailed April 8, 2009, in response to the Notice of Non-Compliant Appeal Brief.

### **Summary of the Claimed Subject Matter (37 CFR 41.37(c)(1)(v))**

With regard to Section V of the Appeal Brief, claim 21 is the sole independent claim on appeal. Claim 21 is supported by the specification at page 3, lines 8-26, and as illustrated in Figures 1-11, 21, 22, and 25-27 with reference to the numeric indicators as provided below. In particular, claim 21 is directed to a device comprising a cartridge ((20) figures 1, 2 and 11), having a lysing chamber ((86) figures 4, 7, 8 and 9) for lysing the cells or viruses to release the analyte therefrom. The lysing chamber contains capture material for capturing the cells or viruses in the sample as the sample flows through the lysing chamber. The capture material comprises at least one filter (94, 97) or beads (96, 99) (see, figure 6, and page 3 lines 9-11 and page 12, lines 5-8) and the lysing chamber being defined by at least one wall having an external surface (see page 3, lines 11-13). The cartridge (20) also has at least one waste chamber ((68) figures 3, 7, and 8 and page 3, lines 15-18) for receiving used sample fluid that has flowed through the

lysing chamber (86). The cartridge further has at least a third chamber ((42) figures 1, 2, 9, 21, 22, and 25-27; and page 3, lines 18-22) for receiving the analyte released from the cells or virus, and the cartridge also has at least one flow controller (page 3, lines 23-36) for directing the used sample fluid, from which the cells or viruses have been separated, to flow into the waste chamber (68) after the sample fluid flows through the lysing chamber (86) and for directing the analyte released from the cells or viruses to flow into the third chamber (42). The device also comprises a transducer (92) arranged to sonicate the lysing chamber (86), the transducer being coupled to the external surface of the wall (see page 12, line 30 to page 13, line 4).

### **Conclusion**

The information as presented herein, addresses each of the reasons as stated in the Notice of Non-Compliant Appeal Brief mailed March 5, 2009. Applicant believes that the Appeal Brief is now fully compliant with the provisions as set forth in 37 CFR 41.37, and as such respectfully request that the Notice of Non-Compliant Appeal Brief be withdrawn.

Respectfully submitted,

/Robert C. Burrows/

Robert C. Burrows, Ph.D.  
Reg. No. 61,039

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: (415) 576-0200  
Fax: (415) 576-0300  
RCB:rcb  
61880766 v1